

Effective 5/10/2016

Superseded 7/17/2016

31A-44-605 Civil liability.

- (1) A provider who enters into a continuing care contract with an individual without complying with the disclosure statement requirement described in this chapter, or who makes a continuing care contract with an individual who relies on a disclosure statement that omits a material fact, is liable to the individual for:
 - (a) actual damages;
 - (b) repayment of all fees the individual paid to the provider, minus the reasonable value of care and lodging provided to the individual before the violation, misstatement, or omission was discovered or reasonably should have been discovered;
 - (c) interest at the legal rate for judgments;
 - (d) court costs; and
 - (e) reasonable attorney fees.
- (2) A provider is liable under this section regardless of whether the provider had actual knowledge of the misstatement or omission.
- (3) An individual may not file or maintain an action under this section if:
 - (a) the individual, before filing the action, receives a written offer from the provider for refund of all amounts paid to the provider or the provider's facility plus reasonable interest from the date of payment, minus the reasonable value of care and lodging provided before the receipt of the offer;
 - (b) the offer includes a description of the provisions of this section; and
 - (c) the recipient of the offer fails to accept the offer within 30 days after the date the offer is received.
- (4) An individual shall bring an action under this section before the day three years after:
 - (a) the day on which the individual enters into the continuing care contract; or
 - (b) the individual discovers, or reasonably should have discovered, the provider's violation, misstatement, or omission.
- (5) A person does not have a cause of action under this chapter except as expressly provided by this chapter.
- (6) This chapter does not limit the liability that exists under any other statute or common law.
- (7) The provisions of this chapter are not exclusive and the remedies provided by this chapter are in addition to any other remedies provided by any other law.